

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
)
)
Amendment of Part 90 of the)
Commission's Rules to)
Facilitate Future Development)
of SMR Systems in the 800 MHz)
Frequency Band)

PR Docket No. 93-144

Implementation of Sections)
3(n) and 322 of the)
Communications Act Regulatory)
Treatment of Mobile Services)

GN Docket No. 93-252

Implementation of Section)
309(j) of the Communications)
Act - Competitive Bidding)

PP Docket No. 93-253

To: The Commission

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**ENTERGY SERVICES, INC.'S REPLY TO NEXTEL'S
OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Entergy Services, Inc. ("Entergy"), through its undersigned counsel and pursuant to section 1.429 (g) of the Rules of the Federal Communications Commission ("FCC" or "Commission"), respectfully submits this Reply to Nextel's Opposition to Petitions for Reconsideration ("Nextel's Opposition") which was filed herein on April 16, 1996 in response to Petitions for Reconsideration challenging the Commission's First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making

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(collectively "First R&O") in the above-captioned proceedings.^{1/}

I. INTRODUCTION

1. On December 15, 1995, the Commission released new rules governing Specialized Mobile Radio ("SMR") systems on the upper 200 800 MHz channels.^{2/} In addition to the new rules governing the upper 200 MHz channels, the Commission determined to reallocate the General Category channels to exclusive SMR use.

2. On March 18, 1996, 23 parties, including Entergy, filed Petitions for Reconsideration and/or Clarification, of the First R&O. Entergy's petition sought reconsideration of the Commission's decision to reallocate the General Category channels arguing that the Commission's decision in Paragraph 137 of the First R&O to redesignate the General Category exclusively for SMR use: (1) violated section 4 of the Administrative Procedures Act ("APA") because the Commission failed to adequately provide interested parties a reasonable opportunity to participate in the rule making; and (2) violated section 10 of the APA because the Commission failed

^{1/} FCC 95-501, released December 15, 1995.

^{2/} See First R&O.

to provide a reasoned basis for its decision, and thus its decision was arbitrary and capricious.

3. On April 16, 1996, Nextel Communications, Inc. ("Nextel") filed its Opposition to Petitions for Reconsideration in the above-referenced proceeding. Because Nextel's Opposition largely misstates the industry position concerning the General Category reallocation, Entergy submits the following Reply to correct the record in this proceeding.

II. DISCUSSION

A. Contrary to Nextel's Assertion, There is Broad Opposition to the Commission's Decision to Reallocate the General Category Channels.

4. Nextel completely mischaracterizes the breadth of opposition to the Commission's proposal to reallocate the General Category channels to exclusive SMR use. Nextel asserts that opposition to the reallocation of the General Category channels comes "essentially" from utilities.^{3/} This statement misrepresents the record in this proceeding, and therefore is wrong.

^{3/} Nextel Opposition at 10.

5. Of the 23 petitions for reconsideration filed in this proceeding, more than half of the petitioners sought reconsideration of the Commission's decision to reallocate the General Category channels.^{4/} These petitioners represent a diverse cross-section of non-SMR licensees, including utility, industrial, business and public safety licensees, all of whom need access to the General Category channels to meet their significant private internal communications needs. As such, contrary to Nextel's disingenuous assertion, the petitions for reconsideration in this proceeding reveal broad opposition to the reallocation of the General Category channels.

B. The Parties Opposing the Reallocation of the General Category Channels Need Access to These Channels to Support Their Private Internal Communications Needs.

6. Nextel erroneously suggests that the parties opposing the recategorization of the General Category

^{4/} In addition to Entergy, all of the following petitioners sought reconsideration of the Commission's decision to reallocate the General Category channels: Association of Public-Safety Communications Officials-International, Inc. ("APCO"); Consumers Power Company ("Consumers"); City of Coral Gables, Florida ("Coral Gables"); Federal Express Corporation ("Fed Ex"); General Motors Research Corp. ("GMRC"); Industrial Telecommunications Association, Inc. ("ITA"); J.A. Placek Construction Co. ("Placek"); Personal Communications Industry Association ("PCIA"); Starrick Plumbing, Inc. ("Starrick"); The Telecommunications Association (formerly known as the "Utilities Telecommunication Council"); and, Warner Communications Co. ("Warner").

channels plan to use "the General Category channels for SMR-type services to third parties rather than simply for internal communications needs."^{5/} To support this untenable position, Nextel cites to the communications system of one utility, The Southern Company ("Southern").^{6/}

7. Significantly, Nextel's assertion is belied by the majority of petitions for reconsideration filed in this matter. For example, Entergy, Consumers, Warner, Placek, GMRC, Fed Ex, Coral Gables, and Starrick opposed the Commission's reallocation and explicitly expressed the need for access to the General Category channels to meet private internal communications needs. Similarly, other petitioners, such as APCO, ITA and The Telecommunications Association stated that the vast majority of its membership needed access to the General Category in order to meet internal communications needs. In light of the petitions for reconsideration mentioned above, Nextel's intimation that opposition to the Commission's decision to reallocate the General Category channels is coming from parties who

^{5/} Nextel Opposition at 11.

^{6/} Notably, Southern did not even address the reallocation of the General Category channels in its petition for reconsideration.

plan to use such channels to meet commercial communications needs is completely false.

C. Contrary to Nextel's Position, The Petitions For Reconsideration Filed in this Proceeding Undermine the Commission's Policy Determination.

8. Nextel states that there is overwhelming support for the policy decisions made in the First R&O concerning the reallocation of the General Category channels.^{7/} Nextel's position completely ignores the vast majority of petitions for reconsideration filed in this proceeding as well as the public interest and diverse needs of the current non-SMR General Category licensees.

9. Entergy, ITA, the Telecommunications Association and APCO, all argue that the Commission failed to adequately consider the public interest when it fundamentally reversed its view of the General Category channels.^{8/} Nextel does not address these arguments, but rather nakedly asserts that there is overwhelming support for the policy determinations

^{7/} Nextel Opposition at ii.

^{8/} See Entergy's Petition for Reconsideration at 14-16; ITA Petition for Reconsideration at 4-8; The Telecommunications Association's Petition for Reconsideration at 2-8; and APCO's Petition for Reconsideration at 3-5.

made in the First R&O. Once again, Nextel's position is belied by the record.

10. For example, Entergy, like most utilities, heavily relies on private land mobile radio systems in the 800 MHz band to support critical public safety service functions. Significantly, these systems are used to enhance coordinated responses to emergency situations such as power outages, natural gas leaks, and natural disasters. Because Entergy was unable to secure I/LT, Business, Public Safety or SMR spectrum through the inter-category sharing process due to spectrum congestion in the other 800 MHz spectrum pools, it was forced to license General Category channels to meet its internal communications needs. The viability of the Entergy system hinges on its ability to re-use this core group of General Category channels. As such, without continued access to this spectrum, Entergy's 800 MHz land mobile radio system could be devastated.

11. Similarly, as APCO emphasized in its petition for reconsideration, public safety agencies must have access to the General Category channels because the 800 MHz Public Safety Category channels are already fully occupied.^{9/} To deny these entities continued access to the General Category

^{9/} APCO Petition at 3.

channels puts the communications systems for police, fire and emergency medical agencies at risk.

12. As a matter of practical necessity, utilities as well as public safety agencies need private internal communication networks. These internal communications systems are critical to public safety. Because numerous petitioners took issue with the Commission's public interest determination concerning the reallocation of General Category channels, Nextel's position that there is broad support for the Commission's policy determination should be ignored.

13. Although the Commission has indicated that its decision to reallocate the General Category channels is motivated by its desire to put the spectrum to its most efficient use, the petitions for reconsideration filed in this proceeding reveal that the public interest is best served by allowing utilities, public safety organizations and other PMRS entities to meet their internal communications needs through continued access to the General Category channels.

14. For the reasons stated above, the Commission should vacate its decision to reallocate the General Category channels for exclusive SMR use.


III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc. urges the Commission to consider this Reply to Nextel's Opposition to Petitions for Reconsideration of the First R&O and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jane L. Simon a legal secretary of the law firm, McDermott, Will & Emery, certify that a copy of "Entergy Services, Inc.'s Reply to Nextel's Opposition to Petitions for Reconsideration" was sent via first-class mail, postage prepaid on May 9, 1996 to:

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